

value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in 24 CFR part 885.

Tenant rent. The amount payable monthly by the family as rent to the PHA or owner, as applicable. Where all utilities (except telephone) and other essential housing services are supplied by the PHA or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the PHA or owner and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total tenant payment. See § 5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§ 5.605 Overall income eligibility for assistance.

No family other than a low-income family shall be eligible for admission to a program covered by this part.

§ 5.607 Income limits for admission.

(a) *General*—(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the dwelling units that were available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by low-income families other than very low-income families. HUD reserves the right to limit the admission of low-income families other than very low-income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (b) and (c) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(b) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (a)(2) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(1) *For Section 8 Programs.* (i) Low-income families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(ii) Low-income families that are displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act (42 U.S.C. 1437o), or as a result of activities under the Rental Rehabilitation Demonstration Program;

(iii) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low-income families;

(iv) Commitment of an owner to attaining occupancy by families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the owner is pursuing this goal throughout its assisted projects in the community; and

(v) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103).

(2) *For public housing only.* (i) Need for admission of a broader range of tenants to obtain full occupancy;

(ii) Local commitment to attaining occupancy by families with a broad range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(iii) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(iv) Need to avoid displacing low-income families from a project acquired by the PHA for rehabilitation.

(c) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners and PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic re-

view, based on the findings of the review.

(d) *Reporting.* PHAs and owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain the reasonably current data necessary to monitor compliance with the income eligibility restrictions described in paragraph (a) of this section.

(e) *Inapplicability to certain scattered site housing.* The income eligibility restrictions described in paragraph (a) of this section do not apply to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)).

(f) *Inapplicability to the Section 8 Rental Voucher and Rental Certificate Programs.* The provisions of this section do not apply to the Section 8 Rental Voucher and Section 8 Rental Certificate Programs.

(Approved by the Office of Management and Budget under Control number 2502-0204.)

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a